671 Despite its apparent and proclaimed orthodoxy, occasional amendments, either in theory or practice or both, have been made through royal decrees or common-law [588] usage. For example, concubinage has long been practiced, sometimes in the form of "dämoz" marriage, which evades the Fetha Nagast by giving the woman the status of "hired servant" receiving a periodic "wage", and in this form the practice is at present legally recognized even in the new, modern laws decreed by the present emperor.

In fact, the "Fetha Nägäst" contains an "elastic clause", which has been rediscovered under the present regime, and is cited as justification for the new, European-patterned laws which upset the ultra-conservatives. This clause advises: "Act according to your observation of the c nditions of times and seasons". This was quoted in the new Penal Code of 1930.

● 681 However, in the past, the draconic aspects of the criminal law in particular were most literally interpreted by many kin chiefs and feudal lords up to the beginning of the present emperor's regime. The hand of a thief was cut off, and in case of armed robbery both a hand and a foot. Rebels were similarly punished. If a person took the usual oath, "by the life of the King" and was found to have perjured himself, his tongue could be cut out. An insult to the king could be punished by blinding. A father had the right of life and death over [593 567] his children--but not over his Christianized slaves. The latter were further protected against being sold, the penalty for which offense could be the hanging of the master.

681 master. Such verdicts were still carried out during the reign of Emperor Menelik II who died in 1913, though he tried to reduce the literal enforcement of the more draconic parts of the Code.

It is noteworthy that the application of the "Fetha Nägäst" was supposed to be based on the biblical principle of Luke, that punishment should be applied according to the knowledge of the offender, not according to the seriousness of the offense. This was reaffirmed in the Penal Code of 1930 (though in effect this new code abrogated much else of the Fetha Nägäst), as follows:

672 692 The following are degrees of relative culpability, in accordance with which degrees of punishment are to be determined on a declining scale:

The man who knows the law
the forgetful person (unstable personality)
the "balagär" (rustic peasant)
the (otherworldly) monk
the poor and ignorant person (illiterates)
the stranger
the ignorant woman
the imbecile or invalid
the Ethiopian from a non-Amharic-speaking province
the child below age 12.

The judge was also permitted and encouraged to take the emotional personality of the offender into consideration(without indicated scale) , such as:

The oppressive person
the lawless
the proud
the envious
the treacherous
the revengeful
the intemperate
the quarrelsome
the careless
the bullying

693 was forfeited by the loser. Under the old system a poor man who could not, even with the aid of kinsmen, raise his bet to equal that of his richer opponent, had little recourse to justice except the "abyet".

[66] The old system also left wide opportunities for bribing of judges, for the borderline between a public "wager" and private bribe was thin. In rural areas the pattern of "wager" still persists. But most danya now officiate in the towns, in a "ferd-byēt" (lit. Judgment-House), often an Italian-built administrative building; and the court procedure has taken on a more modern pattern, through the gradual effect of the pressure in this direction from Addis Ababa. His fines may range from Eth$25.- to Eth$500.-; prison sentences from one month to one year.

The "danya" is a regular judge in that he sits in judgment all year long, at regular intervals. Wednesdays and Fridays are preferred, because they are light "fast-days", on which the "mind is not weighted down with food", according to the traditinnal attitude. Thus, time and place and frequency of function of the "danya" are formally established in the judicial structure, and form the broad base of this part of social organization.

(4) The Appeals Judge, "wombär" (or, "wänbär", or "wänbär", lit. seat), does not sit as regularly in the "ferd-byet". Several times a year (at least once) he travels on a judicial circuit, and also accompanies the governor-general on his inspection tours. Tradi-

693 tionally the country of Abyssinia had 12 wombär, possibly in allusion to the 12 apostles (as in the "mähabbär" sodality). In the past the wombar were appointed by the "ras" or the"negus". At present they are still usually appointed by the governor-general of the province, who is their immediate superior, and whom they besiege in "daj tenat" for this high office. The old "ras" or "negus" usually had two wombar sit at each side of the throne, but the one sitting at the lord's right, the "qän wombär", outranked the one sitting at his left ("gera wombär"). This seniority in seating is still followed at the court of the modern-attired governor-general. The latter usually reappoints new wombar when he is himself assigned to another province, and since the wombar resides in the provincial capital, he is a permanent part of his official retinue during his tour of office there.

The wombar usually goes on circuit after the main harvest, and "sits" at major market towns to hear appeals. Formerly, the provincial "ras" would sit under the old fig tree, flanked by his wombars, and hold court even on capital punishment cases. The latter are now referred [681] to Addis Ababa, to the High Court. But the wombar is now empowered to assess damages or fines up to Eth$2000.-, to pass prison sentences up to 5 years, and lashes up to 25 (the latter usually in assault cases).

694 Though the principle of "habeas corpus" did not exist in the treditional law, kinfolk of the accused being held by a danya a long time without trial could go to the wombär's court in the town he resided in, and by

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

F. Law and Justice in Transition.

178 671 Emperor Menelik II had tried to limit what Europeans considered draconic penalties and procedures. Emperor Haile Selassie I continued to adjust tribal law to modern conditions, and, as his power increased, expressed the principle, in the Penal Code of 1935: "By learning European practice, (the people) may attain to higher degrees of knowledge, because the basis of our code of laws in many places fits with the European code". Both emperors, while introducing modern acculturation in law and justice, quite consciously, did not, it is clear, abrogate the old tradition. They could not have done so in practice, despite the growing power of the central monarchy. For the traditional values and attitudes, particularly among the Amhara, are still largely intact.

The transitinn can be analyzed as proceeding in four phases: (a) The abrogation of draconic penalties and procedures; (b) continuing customary law and justice, (officially and unofficially); (c) Modernization from the top down; (d) Sectarian privileges to resident minorities.

681 178 671 (a) During the reign of Menelik II enforcement of the old draconic penalties continued. The hand of a thief was cut off, and he was thereafter called "dush" (lit. stump). Cattle rustlers, "dandā", were punished the same way. It was not rare to see mutilated persons, hand or foot or both, in those days. It was not until the coronation of Emperor Haile Selassie I that the Penal Code of 1930 could have been decreed and enforced.

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

681 178 671 According to this change, mutilation of thieves was forbidden; the chaining of debtor to creditor was abrogated; flogging was reduced in frequency and quantity; the area that could fall under collective arrest, "afärsata", was limited; the legal validity of evidence from the "lebäshay" was indirectly abrogated. In 1933, the emperor further limited days, hours, and distances of the "afärsata". Capital punishment had been centralized in 1930.

It is noteworthy that in several cases old practices were for the first time acknowledged in writing, despite the continuing hesitancy to admit publicly any practice that European observers might regard as primitive. Thus, blood-money in place of blood-feud was decreed legal in 1930

426 671 178 Liberalization was also legalized by regarding civil law. In 1923 the Law of Loans fixed maximum interest at 9%. As usual , this was found to be too far a departure from practice for enforcement, and it was later raised to 12%. One of the last decrees prior to Italian hostilities, provided, in May 1935, for the abrogation of statute-labor, permitting the tenant (gabbar) to make a small payment (resembling a quitrent) instead.

694 661 178 (b) The pattern of judges riding circuit continued unabated, from the end of the harvest in the month of Tahsas (about November) until Easter. Sometimes judicial councils, "<u>gubaē</u>" were available in towns for appeals. But the old custom of bringing a gift to the "great man" to interest him in the indivi-

829 pattern continues in full force even at present. As a result, the high official is as hesitant about delegating authority downward (which might build up a potential rival), as the inferior in the hierarchy fears to accept delegated authority (lest the superior repent of his grant and suspect rebellion). In consequence, daily problems, even routine ones, are regularly referred for decision to the superior in the hierarchy of government.

812 The authoritarian "literalness" which characterizes so many Amhara attitudes may at least in part be the effect of religious fundamentalism. Until recently, the "Fetha Nagast" criminal and [681] civil code was literally enforced, including the cutting off of hands for theft and of feet for rebellion. Biblical passages are interpreted literally, by the priests. In monasteries, the monks exclude the presence of even female animals such as cows.

779 The church, sacerdotal in its concepts and rituals, does not feel that it owes an explanation to anyone; and "literalness" has remained unchallenged (except during the relatively brief Portuguese episode). In the Amhara view, there is a direct and unilateral connection between cause and effect, and paradoxes that result from such oversimplifications are ignored: e.g. the tallest obelisk at Aksum, which has fallen and broken into several large pieces, is claimed to have been "pushed" over by the Falasha Queen Judith, despite the fact that another, almost as tall, still stands nearby. [682] Homicide, especially if accidental, is blamed on the "kenyen" spirits who pushed the murderer's hand.

647 Literal obedience dominates the governmental administration, for no subordinate would arrogate to himself the privilege of "interpret" the spirit of the law handed down by the official of superior status.

4: Alvarez M-5 (1520-1526) 1881
MP5 Amhara MP5

He said that no men died at the hands of justice, that they flogged many, and put out the eyes of some, and of others they cut off a foot or a hand, according to the quality the crime; but that he had seen a man burned because he was found to have committed two robberies in a church.

That the Pope or Patriarch of the country of Prester John is called Abima, which means father, and that there is nobody else in all the kingdoms and lordships of the Prester who confers orders except him.

The Prester John is called Acegue,[1] which means emperor, and he is called Neguz, which means king.

There is no manner of physic, only they apply fire; in some sickness they use cupping without fire, and for headaches, they bleed on the head with a knife placed on the vein, and they strike it with a stick so that it should draw blood, and also they take some herbs as a beverage to cure themselves.

In all the country there is no town which exceeds one thousand six hundred inhabitants, and of these there are few, and there are no walled towns or castles, but villages without number. The houses generally, or most of them, are round, and all of one story, covered with terraces or thatch, and courtyards round them. People generally sleep on ox-hides, others on beds made of straps of the same hides; no kind of table. They eat in flat trenchers, like trays of great width, without napkins or tablecloths. They have basins of very black earthenware like jet, and pipkins of the same clay for drinking water and wine. Many eat raw meat, and others eat it roasted on the ashes, others roasted over woodfire, and others over cowdung where there is no wood. There is much wax there, and tapers and candles; they do not make candles of tallow. There is no oil there except a kind which they call *hena*, and which is made from some herbs like Mayweed;[2] it has no taste, and is beautiful as gold. There

[1] *Akegue*, an Emperor. [2] *Pampilhos*, also called *olho de boy*.

11:Levine Z-4,5 (1958-1961)1965 MP5 Amhara MP5

the contemporary church hierarchy, the *dabtarā* stressing their special intellectual qualification for high positions, the monks their greater piety.

The Traditional Balance

Whatever the internal fragmentation of the church—which was compounded by regionally based doctrinal controversies—it may for the moment be considered as a unified estate vis-à-vis the secular powers. This permits us to raise the question of the integration of politico-military and religious elites in traditional Abyssinian society, a question that may be discussed in terms of two relationships: that between the values represented by the two elites, and that between the interests of their respective institutions.

The social teachings of the Ethiopian Church were couched in terms of practical justice, not universal love. Thus the pacifistic strain in Christianity barely made itself felt. The priests, to be sure, were forbidden to shed blood, animal or human; but this is more in the nature of a necessity for the maintenance of ritual purity than a symbol of moral principle. They went along willingly to the battlefield in ceremonial capacity. In fact, comments d'Abbadie, most of them would reject the interdiction of their taking part in military expeditions as a denial of their rights.[50]

Far from opposing warfare, Ethiopian Christianity served rather as an inspiration and justification for wars; since much of the fighting was directed against Muslim, Judaic, or pagan peoples, the warfare took on something of a crusading tone. As for internecine war, it was commonly justified in terms of *lex talionis,* a religiously sanctioned punishment for the sins of the enemy. In this respect, then, the two elites gave impressive support to each other. The warlords were serving the church by fighting the heathen. The fate of their military expeditions, on the other hand, was assisted by the prayers of the accompanying clergy. This reciprocal dependence was symbolized by the custom of taking some *tābot* along with the army to the battlefield, and by the custom of "greeting" the church as the first thing a warrior does when he returns home.

The values of warfare and religion were further harmonized by the symbolism of the emperor, Lion of Judah. The emperor combined in his person the figures of indomitable warlord and devout—and divinely guided—Christian. This combination was an integral part of the self-image projected by many emperors, as reflected, for example, in the identification with Constantine the Great manifested by Zar'a Yā'qob and Eskender (1478–94) in their choice of throne name, and by Tēwodros II in his coronation speech.

With regard to civil policy, moreover, the nobility and clergy were in basic accord. Both groups felt a special responsibility for adjudicating disputes. Both felt that their superior status entitled them to receive substantial amounts of rent and revenues from lands granted them by the king, and to

11:Levine Z-4,5 (1958-1961)1965 MP5 Amhara MP5

of moral pressure for the reconciliation of conflict, it appears to place greater emphasis on the acting out of aggression. It does this, first of all, by defining a number of acts as offenses which justify violent retribution of some sort. Appropriation of one's land, seduction of one's wife, and injury of one's relatives are acts of this nature, and it is incumbent on the offended party to seek personal revenge or, as the Amhara put it, "to return the debt" (*bedder mammalas*). It is considered shameful to remain passive when so affronted, an attitude expressed in the following couplet:

Balaw ba-dimotfar daggmaw ba-wānzā,
Bābbāt ristennā yallam bamīst wāzzā.

Shoot him with the dimotfar,* get him again with
a wanza,*
Taking your father's land or your wife away,
that is no joking matter.

Aggressiveness is further encouraged by the Amhara ego ideal of masculinity.[13] The identity of Amhara males is very much bound up with their capacity for aggressiveness, by both violent and verbal means. A man who has killed someone is regarded with a certain amount of veneration, and the act of killing is itself praised in verses such as:

Saw gadlu saw gadlu: saw magdal yebajāl,
Saw yālgadala saw sihēd yāngolājāl.

Kill a man! Kill a man! It is good to kill a man!
One who has not killed a man moves around
sleepily.

Similarly, verbal aggression is encouraged by the inclusion of excellence at litigation and insulting in the domain of proper male behavior.[14] The bestowal of insults is a rather stylized, if dangerous, procedure among the Amhara. According to Amhara customary law, insulting is a legal offense. The new criminal code provides for a gradation of penalties according to the seriousness of the insult, including fines which run from Eth$15 to as much as hundreds of dollars. The most serious insults include *bāryā* ("slave"); *ṭayb* ("evil-eyed artisan"); and *qomātā* ("leper"). Insults of lesser to medium degrees of seriousness include the following:

hodām	"greedy" (literally, "bellied")
wafrām	"fat"
sakārām	"drunkard"
quashāshā	"dirty"
amadām	"scaly-faced" (literally, "ashen")

* Types of rifles.